

REMARKS

1. In response to the Office Action mailed June 16, 2010, Applicants respectfully request reconsideration. Claims 139, 140, 144-150, 153, 155-162, 164-171 and 173-180 were last presented for examination. In the outstanding Office Action, all claims were rejected. By the foregoing Amendments, claims 139, 145, 155, 156, 165-168, 171, 173-175, 177-180 have been amended, claims 147-149, 160, 161, 169, 170 have been cancelled, and claims 181-187 have been added. Thus, upon entry of this paper, claims 139, 140, 144-146, 150, 153, 155-159, 162, 164-168, 171 and 173-187 will be pending in this application. Of these thirty-four (34) claims, four (4) claims (claims 139, 156, 165, and 174) are independent.

2. Based upon the above Amendments and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

Claim Rejections under 35 U.S.C. §101

3. The Examiner has rejected claims 165-171 and 173 under 35 U.S.C. §101 as allegedly claiming non-statutory subject matter. Specifically, the Examiner contends that claim 165 is directed to non-statutory subject matter because the “computer readable medium” recited in Applicants’ claim 165 “covers forms of non-transitory tangible media and transitory propagating signals *per se*.” (See, Office Action, pgs. 2-3.) The Examiner suggests amending the claim to replace the “computer readable medium” with “non-transitory computer readable medium.” (See, Office Action, pgs. 2-3.)

4. Applicants thank the Examiner for the suggested amendment. Applicants have amended claims 165-168, 171 and 173 as suggested by the Examiner. As such Applicants respectfully request that this rejection be reconsidered and withdrawn.

5. Additionally, Applicants have cancelled claims 169 and 170, thus rendering the rejection of those claims moot.

Examiner Interview

6. Applicants thank the Examiner for the courtesies extended to Applicants' representatives in the telephonic interview conducted on September 9, 2010. In the interview, the Examiner agreed that the references applied in the Office Action do not disclose cochlear implant after-care testing, as recited in the pending claims, in which the recipient has the ability to step through tests. Accordingly, Applicants have amended the pending claims to clarify that the recipient controls the testing and the recipient subsystem proceeds through the testing in response to recipient inputs. For the Examiner's benefit, Applicants will briefly explain below why Applicants' amended claims are patentable over the references applied in the Office Action.

7. Applicants also thank the Examiner for agreeing to contact Applicants' representative should the claim amendments listed above and discussed below not be acceptable to the Examiner.

Claim Rejections under §102 - Givens

8. The Examiner rejects claims 139, 140, 144, 147-150, 155, 156, 159-162, 164, 165, 168-171, 173, 174 and 178 under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent No. 6,916,291 to Givens et al., (hereinafter, "Givens"). Givens is directed to a system for performing interactive diagnostic hearing tests over a computer network in a manner that satisfies regulatory or certification guidelines. (*See*, Givens, col. 2, lns. 18- 56.) That is, Givens is directed to methods implemented by a clinician to remotely assess and certify the hearing loss of a patient according to standardized guidelines. (*See*, Givens, col. 2, lns. 18- 56.)

9. In Givens, the tests "use a computer network to allow interaction between a test administration site and one or a plurality of remote ('local') patient sites." (*See*, Givens, col. 8, lns. 57-61.) Specifically, the "test is relayed from the test administration site to a desired patient or local site through the use of a computer network." (*See*, Givens, col. 8, ln. 63- col. 9, ln. 15.) The tests are then administered by the clinician in a manner that allows "interaction (typically one or more of a non-verbal, verbal, and/or visual communication interaction either one way or

two way) between the user [patient] and the clinician during at least a portion of administration of the test.” (*See*, Givens, col. 9, lns. 15-20.) Furthermore, in one embodiment, Givens discloses a portable local device that “may be implemented as a pervasive computing device that is configured to generate the desired test signals and to receive the response signals and relay the information to the remote site via the communication link.” (*See*, Givens, col. 19, lns. 55-60.)

Claim 139

10. As the Examiner agreed during the above mentioned interview, Givens may allow patient interaction via a local device, but fails to disclose a system providing the recipient the ability to step through stages/tests. As amended, Applicants’ claim 139 recites a system in which “a recipient subsystem configured to... communicate with the cochlear implant and to perform the series of after-care tests, substantially independent of the clinician subsystem, in response to a series of recipient inputs.” (*See*, Applicants’ claim 139, above; emphasis added.) Applicants submit that Givens fails to disclose such a system. In particular, Applicants submit that Givens fails to disclose any local device that enables a recipient to proceed through a series of after-care tests, via the recipient’s input to the local device, substantially independent of a remote site.

11. Accordingly, Applicants respectfully request that this rejection be reconsidered and withdrawn.

Claim 156

12. As amended, Applicants’ claim 156 is directed to a “method for performing after-care of a recipient of a cochlear implant.” (*See*, Applicants’ claim 156, above.) The method comprises “receiving recipient inputs; [and] performing the series after-care tests with the recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem.” (*See*, Applicants’ claim 156, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Givens fails to disclose these elements of claim 156.

Claim 165

13. As amended, Applicants' claim 165 is directed to a "non-transitory computer readable medium comprising computer code instructions which, when executed by a computer system implement a method of performing after-care of a recipient of a cochlear implant." (*See*, Applicants' claim 165, above.) The method comprises "receiving recipient inputs via the recipient interface; [and] performing the series of after-care tests with the recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 165, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Givens fails to disclose the above elements of claim 165.

Claim 174

14. As amended, Applicants' claim 174 is directed to a "system for performing after-care of a recipient of a cochlear implant." (*See*, Applicants' claim 174, above.) The system comprises "means for receiving recipient inputs via the recipient subsystem; [and] means for proceeding through the series of after-care tests with said recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 174, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Givens fails to disclose at least the above elements of claim 174.

Claim Rejections under §103 - Givens in view of Faltys

15. The Examiner also rejects claims 145, 146, 153, 157, 158, 166, 167, 175-177, 179 and 180 under 35 U.S.C. 103(a) as allegedly being unpatentable over Givens in view of U.S. Patent No. 5,626,629 to Faltys et al., (hereinafter, "Faltys"). Applicants assert that neither Givens nor Faltys, taken alone or in combination, inherently or expressly disclose all elements of the claimed invention.

Claim 139

16. In the outstanding Office Action, the Examiner asserts that “Givens teaches many of the features of the claimed invention,” as set forth in the §102 rejections over Givens. However, as explained above with specific reference to claim 139 and as discussed during the interview, Givens fails to expressly or inherently disclose a system in which a “recipient subsystem configured to receive the after-care tests from the clinician subsystem, and wherein the recipient subsystem is configured to communicate with the cochlear implant and to perform the series of after-care tests, substantially independent of the clinician subsystem, in response to a series of recipient inputs,” as recited in Applicants’ claim 139, as amended. (*See*, Applicants’ claim 139, above; emphasis added.) Applicants assert that Faltys fails to disclose that which is missing from Givens.

17. Faltys is directed to a system for fitting or programming a cochlear stimulation system for a patient utilizing objective measurements rather than subjective feedback. (*See*, Faltys, col. 3, lns. 29-47.) In Faltys, the clinician utilizes the fitting system to instruct the cochlear implant system to deliver an electrical stimulation signal to the patient. (*See*, Faltys, col. 5, ln. 52-col. 6, ln. 42; and col. 15, lns. 19-56.) The fitting system records an objective measurement of the patient’s response to the stimulation. (*See*, Faltys, col. 6, lns. 32- col. 8, ln. 23.) Based on the objective measurement, the clinician adjusts the stimulation provided. (*See*, Faltys, col. 6, lns. 32- col. 8, ln. 23; and col. 15, lns. 52-56.) This procedure is iteratively repeated to determine a patient’s threshold and comfort levels. (*See*, Faltys, col. 6, lns. 32- col. 8, ln. 23; col. 15, lns. 52-56; and col. 16, lns. 19-23.) In other words, in the system of Faltys, a clinician operates the tests, evaluates objective feedback and adjusts stimulation signals applied to the patient. (*See*, Faltys, col. 6, lns. 32- col. 8, ln. 23; and col. 15, lns. 19-56.) Due to this large amount of clinician involvement, Applicants submit that Faltys fails to disclose any local device that enables a patient to proceed through a series of after-care tests, via the patient’s input to the local device, substantially independent of a remote site. As such, Applicants submit that Faltys fails to cure the above-noted deficiencies of Givens. Further, Applicants note that in the

Interview of September 9, 2010, the Examiner indicated that nothing in Faltys cured the above-noted deficiencies of Givens.

18. Therefore, because neither Givens nor Faltys, taken alone or in combination, disclose all elements of the system of claim 139, Applicants respectfully request that the above rejections of claims 145, 146, 153, 177, 179 and 180 under 35 U.S.C. §103 be reconsidered and withdrawn.

Claim 156

19. As amended, Applicants' claim 156 is directed to a "method for performing after-care of a recipient of a cochlear implant." (*See*, Applicants' claim 156, above.) The method comprises "receiving recipient inputs; [and] performing the series after-care tests with the recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 156, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Faltys fails to disclose at least these elements of claim 156. Therefore, because neither Givens nor Faltys, taken alone or in combination, disclose all elements of the system of claim 156, Applicants respectfully request that the above rejections of claims 157 and 158 under 35 U.S.C. §103 be reconsidered and withdrawn.

Claim 165

20. As amended, Applicants' claim 165 is directed to a "non-transitory computer readable medium comprising computer code instructions which, when executed by a computer system implement a method of performing after-care of a recipient of a cochlear implant." (*See*, Applicants' claim 165, above.) The method comprises "receiving recipient inputs via the recipient interface; [and] performing the series of after-care tests with the recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 165, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Faltys fails to disclose at least these elements of claim 165. Therefore, because neither Givens nor Faltys, taken alone or in combination, disclose all elements of the system of claim 165, Applicants respectfully request that the above

rejections of claims 166 and 167 under 35 U.S.C. §103 be reconsidered and withdrawn.

Claim 174

21. As amended, Applicants' claim 174 is directed to a "system for performing after-care of a recipient of a cochlear implant." (*See*, Applicants' claim 174, above.) The system comprises "means for receiving recipient inputs via the recipient subsystem; [and] means for proceeding through the series of after-care tests with said recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 174, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Faltys fails to disclose at least these elements of claim 174. Therefore, because neither Givens nor Faltys, taken alone or in combination, disclose all elements of the system of claim 174, Applicants respectfully request that the above rejections of claims 175 and 176 under 35 U.S.C. §103 be reconsidered and withdrawn.

Claim Rejections under §103 - Faltys in view of Alexandrescu

22. The Examiner also rejects claims 139, 140, 144-150, 153, 155-162, 164-171 and 173-180 under 35 U.S.C. 103(a) as allegedly being unpatentable over Faltys in view of U.S. Patent No. 5,909,497 to Alexandrescu et al. (hereinafter, "Alexandrescu"). Applicants assert that these rejections are improper because neither Faltys nor Alexandrescu, taken alone or in combination, inherently or expressly disclose all elements of the claimed invention.

Claim 139

23. As detailed above and discussed during the interview, Faltys fails to disclose a system in which a "recipient subsystem configured to receive the after-care tests from the clinician subsystem, and wherein the recipient subsystem is configured to communicate with the cochlear implant and to perform the series of after-care tests, substantially independent of the clinician subsystem, in response to a series of recipient inputs," as recited in Applicants' claim 139, as amended. (*See*, Applicants' claim 139, above; emphasis added.) Applicants assert that Alexandrescu fails to disclose that which is missing from Faltys.

24. Alexandrescu is directed to an acoustic hearing aid having an interface permitting wireless programming of the signal processor. (*See*, Alexandrescu, col. 1, lns. 49- 59.) Specifically, the programming interface wirelessly receives program codes and translates the codes into a programming language usable by the signal processor of the acoustic hearing aid. (*See*, Alexandrescu, col. 3, ln. 59- col. 4, ln. 19.) The programming is then implemented by the signal processor. (*See*, Alexandrescu, col. 3, ln. 59- col. 4, ln. 19.) The hearing aid is also able to transmit program codes when requested by a hearing aid specialist. (*See*, Alexandrescu, col. 5, lns. 17-22 and 37-67.) More specifically, “the hearing instrument must preferably be removed from the user’s ear and coupled to an acoustic adapter” for this purpose. (*See*, Alexandrescu, col. 5, lns. 37-50.)

25. Applicants submit that Alexandrescu fails to disclose any local device that enables a patient to proceed through a series of after-care tests, via the patient’s input to the local device, substantially independent of a remote site. (*See*, Applicants’ claim 139, above; emphasis added.) Rather, Alexandrescu discloses that the hearing aid is capable of receiving and implementing programming codes, and capable of transmitting program codes to a hearing aid specialist. As such, Applicants submit that Alexandrescu fails to cure the above-noted deficiencies of Faltys.

26. Therefore, because neither Faltys nor Alexandrescu, taken alone or in combination, disclose at least these elements of the system of claim 139, Applicants assert that the above rejection of claim 139 under 35 U.S.C. §103 is improper and should be withdrawn.

Claim 156

27. As amended, Applicants’ claim 156 is directed to a “method for performing after-care of a recipient of a cochlear implant.” (*See*, Applicants’ claim 156, above.) The method comprises “receiving recipient inputs; [and] performing the series after-care tests with the recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem.” (*See*, Applicants’ claim 156, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Alexandrescu fails to disclose at least these elements of claim 156. Therefore, because neither Faltys nor Alexandrescu, taken alone

or in combination, disclose all elements of the system of claim 156, Applicants respectfully request that the above rejection of claim 156 under 35 U.S.C. §103 be reconsidered and withdrawn.

Claim 165

28. As amended, Applicants' claim 165 is directed to a "non-transitory computer readable medium comprising computer code instructions which, when executed by a computer system implement a method of performing after-care of a recipient of a cochlear implant." (*See*, Applicants' claim 165, above.) The method comprises "receiving recipient inputs via the recipient interface; [and] performing the series of after-care tests with the recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 165, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Alexandrescu fails to disclose at least these elements of claim 165. Therefore, because neither Faltys nor Alexandrescu, taken alone or in combination, disclose all elements of the system of claim 165, Applicants respectfully request that the above rejection of claim 165 under 35 U.S.C. §103 be reconsidered and withdrawn.

Claim 174

29. As amended, Applicants' claim 174 is directed to a "system for performing after-care of a recipient of a cochlear implant." (*See*, Applicants' claim 174, above.) The system comprises "means for receiving recipient inputs via the recipient subsystem; [and] means for proceeding through the series of after-care tests with said recipient subsystem, in response to a series of recipient inputs, substantially independent of the clinician subsystem." (*See*, Applicants' claim 174, above.) For at least the reasons discussed above with reference to claim 139, Applicants respectfully assert that Alexandrescu fails to disclose at least these elements of claim 174. Therefore, because neither Faltys nor Alexandrescu, taken alone or in combination, disclose all elements of the system of claim 174, Applicants respectfully request that the above rejection of claim 174 under 35 U.S.C. §103 be reconsidered and withdrawn.

Dependent claims

30. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

Conclusion

31. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

32. Applicants make no admissions by not addressing any outstanding rejections or bases of rejections. Furthermore, Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Thus, cancellations and amendments of above claims, are not to be construed as an admission regarding the patentability of any claims.

Dated: September 16, 2010

Respectfully submitted,

/Michael G. Verga/
Michael G. Verga
Registration No.: 39,410
KILPATRICK STOCKTON LLP
607 14TH Street, NW
Suite 900
Washington, DC 20005
(404) 815-6500
(404) 815-6555 (Fax)
Attorney for Applicants